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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/507,276	03/10/2005	Harald Michi	10191/3951	3860
26646	7590	11/22/2005	EXAMINER	
KENYON & KENYON ONE BROADWAY NEW YORK, NY 10004			MANCHO, RONNIE M	
			ART UNIT	PAPER NUMBER
			3663	

DATE MAILED: 11/22/2005

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary

Application No.

10/507,276

Applicant(s)

MICHIE ET AL.

Examiner

Ronnie Mancho

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 10 March 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 11-20 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 11-20 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☒ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. _____.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- * See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)
Paper No(s)/Mail Date 9-9-04.
- 4) ☐ Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: _____.

DETAILED ACTION

Status

1. This is a first action in response to the application submitted 3/10/05

Double Patenting

2. The nonstatutory double patenting rejection is based on a judicially created doctrine grounded in public policy (a policy reflected in the statute) so as to prevent the unjustified or improper timewise extension of the "right to exclude" granted by a patent and to prevent possible harassment by multiple assignees. See *In re Goodman*, 11 F.3d 1046, 29 USPQ2d 2010 (Fed. Cir. 1993); *In re Longi*, 759 F.2d 887, 225 USPQ 645 (Fed. Cir. 1985); *In re Van Ornum*, 686 F.2d 937, 214 USPQ 761 (CCPA 1982); *In re Vogel*, 422 F.2d 438, 164 USPQ 619 (CCPA 1970); and *In re Thorington*, 418 F.2d 528, 163 USPQ 644 (CCPA 1969).

A timely filed terminal disclaimer in compliance with 37 CFR 1.321(c) may be used to overcome an actual or provisional rejection based on a nonstatutory double patenting ground provided the conflicting application or patent is shown to be commonly owned with this application. See 37 CFR 1.130(b).

Effective January 1, 1994, a registered attorney or agent of record may sign a terminal disclaimer. A terminal disclaimer signed by the assignee must fully comply with 37 CFR 3.73(b).

3. Claims 11-20 are provisionally rejected under the judicially created doctrine of double patenting over:

claims 8-14 of copending application US 10496434; and

claims 1-14 of copending application US 10767087

This is a provisional double patenting rejection since the conflicting claims have not yet been patented.

The subject matter claimed in the instant application is fully disclosed in the referenced copending application and would be covered by any patent granted on that copending application since the referenced copending application and the instant application are claiming common subject matter, as follows: a speed control otherwise known as a cruise control.

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Furthermore, there is no apparent reason why applicant would be prevented from presenting claims corresponding to those of the instant application in the other copending application. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

4. Claims 1-14 are rejected under the judicially created doctrine of double patenting over: claims 1-14 of U. S. Patents No. 6820709; and claims 1-7 of U. S. Patents No. 6853903, since the claims, if allowed, would improperly extend the "right to exclude" already granted in the patent.

The subject matter claimed in the instant application is fully disclosed in the patent and is covered by the patent since the patent and the application are claiming common subject matter, as follows: a speed control otherwise known as a cruise control.

Furthermore, there is no apparent reason why applicant was prevented from presenting claims corresponding to those of the instant application during prosecution of the application which matured into a patent. See *In re Schneller*, 397 F.2d 350, 158 USPQ 210 (CCPA 1968). See also MPEP § 804.

Claim Rejections - 35 USC § 112

5. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

6. Claims 11-20 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

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In claim 11, the limitation “a safe stop-and-go”

Claims 12-20 are rejected for depending on a rejected base claim.

Claim Rejections - 35 USC § 102

7. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

8. Claims 11-20 are rejected under 35 U.S.C. 102(e) as being anticipated by Joyce et al (6560525).

Regarding claim 1, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose a cruise control system for a motor vehicle, comprising:

a sensor device 18 (fig. 1; col. 3, lines 15+) for measuring an operating parameter of the motor vehicle and for measuring a distance to an object located in front of the motor vehicle; and

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a controller (fig. 1; col. 3, lines 15+) for controlling one of a speed and an acceleration of the motor vehicle as a function of the measured operating parameter and distance data, wherein:

the controller includes a stop-and-go (col. 3, lines 15+) function for automatically controlling driving off, rolling, and stopping as a function of a movement of the object, and the controller continuously checks the sensor device during the stop-and-go operation for at least one predefined condition that contradicts a safe stop-and-go operation, and in the presence of such a condition, initiates a procedure for the shutdown of the stop-and-go function.

Regarding claim 12, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 1, wherein one of the checked conditions is a turn.

Regarding claim 13, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 12, wherein the turn is detected when a turn radius determined by the sensor device is smaller than a predefined threshold value.

Regarding claim 14, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 12, wherein the turn is detected when a turn radius measured by the sensor device is constantly smaller than a predefined threshold value during a predefined time interval.

Regarding claim 15, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 11, wherein one of the checked conditions is that an instantaneous speed of the motor vehicle measured by the sensor device is essentially equal to an intended speed in effect for the stop-and-go function during a predefined time interval, and that no target object is detected during the predefined time interval.

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Regarding claim 16, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 11, wherein one of the checked conditions is that an instantaneous speed of the motor vehicle measured by the sensor device is lower than a limiting speed permitted for the stop-and-go function during a predefined time interval, and that no target object is detected during the predefined time interval.

Regarding claim 17, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 11, wherein a procedure for shutdown of the stop-and-go function includes an output of a request to a driver to one of take over control of the motor vehicle and, provided a condition is met, to switch over to a regular cruise control mode and distance control mode.

Regarding claim 18, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 17, wherein the request includes an acoustic signal.

Regarding claim 19, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 11, wherein a procedure for shutdown of the stop-and-go function includes automatically regulating the speed of the motor vehicle to one of down to zero and to a low speed value.

Regarding claim 20, Joyce et al (abstract, figs. 1-12; col. 3, lines 15 to col. 8) disclose the cruise control system as recited in claim 17, wherein the speed is automatically regulated down after a certain waiting time subsequent to the output of the request has elapsed.

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Conclusion

9. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Ronnie Mancho whose telephone number is 571/272/6984. The examiner can normally be reached on Mon-Thurs; 9-5.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Jack Keith can be reached on 571/272/6878. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

Ronnie Mancho
Examiner
Art Unit 3663

11/14/05


JACK KEITH
SUPERVISORY PATENT EXAMINER